

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JASON A. SMITH,  
Plaintiff,

v.

A. TAMAYO, et al.,  
Defendants.

Case No. 19-01600 BLF (PR)

**ORDER OF DISMISSAL**

Plaintiff, a state prisoner at the Correctional Training Facility in Soledad (“CTF”), filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983, against CTF prison officials. Plaintiff’s motion for leave to proceed *in forma pauperis* will be granted in a separate order.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

**B. Plaintiff's Claims**

Plaintiff seeks redress for the violation of his First Amendment right to the free exercise of his religion, among other claims, for the denial of a Kosher diet as part of the practice of his Rastafarian religion. (Compl., Attach. at 3-7.) Plaintiff names A. Tamayo, Y. Friedman, M. Atchley, and M. Voong as defendants. (Compl. at 2.)

Plaintiff has filed a previous action against the same Defendants under *Smith v. Tamayo, et al.*, Case No. 19-00537 BLF (PR), which is currently pending in this Court. In that case, Plaintiff filed a complaint which is identical to the complaint filed in this action. *Smith v. Tamayo, et al.*, Case No. 19-00537 BLF (PR), (Docket No. 1).

Duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915 as malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). An *in forma pauperis* complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under § 1915. *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey*, 846 F.2d at 1021.

Plaintiff is seeking leave to proceed *in forma pauperis*, as he did in the previous action discussed above. This is now Plaintiff's second *in forma pauperis* action filed against the same Defendants in which he repeats the same claims. It is therefore subject to dismissal under § 1915 as abusive. *See Cato*, 70 F.3d at 1105 n.2; *Bailey*, 846 F.2d at 1021.

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**CONCLUSION**

For the foregoing reasons, the complaint is DISMISSED as duplicative and abusive.  
*See* 28 U.S.C. § 1915.

**IT IS SO ORDERED.**

**Dated:** June 12, 2019



BETH LABSON FREEMAN  
United States District Judge